

RECORDATION NO. 25701 FILED

JUL 08 '05

3-20 PM

SURFACE TRANSPORTATION BOARD

OF COUNSEL  
URBAN A. LESTER

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
1050 SEVENTEENTH STREET, N.W.  
SUITE 301  
WASHINGTON, D.C.

20036

(202) 393-2266

FAX (202) 393-2156

E-MAIL [alvordlaw@aol.com](mailto:alvordlaw@aol.com)

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

July 8, 2005

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Memorandum of Guarantee and Collateral and Intercreditor Agreement, dated as of July 8, 2005, a primary document as defined in the Board's Rule for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Loan Parties: Orient Express Acquisition Company  
Long Haul Holding Corporation  
Helm Financial Corporation  
Helm Locomotive Leasing Corporation  
One Embarcadero Center  
Suite 3700  
San Francisco, CA 94111

Collateral Agent/  
Secured Party: Credit Suisse,  
Cayman Islands Branch  
Eleven Madison Avenue  
New York, NY 10010

Mr. Vernon A. Williams  
July 8, 2005  
Page Two

A description of the railroad equipment covered by the enclosed schedule is:

All autoracks, railcars, locomotives and other rolling stock NOW OWNED OR  
HEREAFTER ACQUIRED by either of the Loan Parties.

A short summary of the document to appear in the index follows:

Memorandum of Guarantee and Collateral and Intercreditor Agreement

Also enclosed is a check in the amount of \$33.00 payable to the order of the  
Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Robert W. Alvord', with a long horizontal stroke extending to the right.

Robert W. Alvord

RWA/anm  
Enclosures

JUL 08 '05

3-20 PM

## SURFACE TRANSPORTATION BOARD

**MEMORANDUM OF GUARANTEE AND COLLATERAL AND INTERCREDITOR AGREEMENT**

This Memorandum of Guarantee and Collateral and Intercreditor Agreement (this "*Memorandum*") is made and entered into as of July 8, 2005 among ORIENT EXPRESS ACQUISITION COMPANY, a California corporation ("*MergerCo*"); LONG HAUL HOLDING CORPORATION, a Delaware corporation ("*Holdings*"); HELM FINANCIAL CORPORATION, a California corporation ("*HFC*" and, together with MergerCo, the "*Borrowers*"); the SUBSIDIARY LOAN PARTIES listed on the signature pages hereof (collectively, together with Holdings and the Borrowers, the "*Loan Parties*"); CREDIT SUISSE, as collateral agent for the Secured Parties (in such capacity, the "*Collateral Agent*"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Guarantee and Collateral and Intercreditor Agreement (the "*Agreement*") dated as of July 8, 2005, among the Loan Parties thereto, the Collateral Agent, Credit Suisse, as TLB/RC Agent, and Credit Suisse, as TLC Agent.

**WITNESSETH**

The TLB/RC Lenders and the Issuing Banks have agreed to extend credit to the Borrowers subject to the terms and conditions set forth in the TLB/RC Credit Agreement, and the TLC Lenders have agreed to make loans to the Borrowers subject to the terms and conditions set forth in the TLC Credit Agreement.

As security for the payment or performance, as the case may be, in full of the Obligations, each undersigned Loan Party hereby assigns and pledges to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, a security interest in, all right, title or interest in or to all Rolling Stock and all other Article 9 Collateral, in each case now owned or at any time hereafter acquired by such Loan Party or in which such Loan Party now has or at any time in the future may acquire any right, title or interest. The term Article 9 Collateral, as used herein, has the meaning set forth in the Agreement and includes, among other things, all of Loan Parties' Documents, Equipment, General Intangibles, Inventory, all books and records pertaining to the foregoing, and all Proceeds and products of any and all of the foregoing and all collateral security and guarantees given by any person with respect to any of the foregoing, now owned or at any time hereafter acquired by such Loan Party or in which such Loan Party now has or at any time in the future may acquire any right, title or interest. The term "Rolling Stock", as used herein, has the meaning set forth in the Agreement and includes auto racks, locomotives, box-cars, covered hopper cars, tank cars, flat cars, chip cars, gondola cars, railroad intermodal equipment, other railroad rolling stock, chassis, trailers, shipping containers and all other equipment and inventory that is used or intended for use in connection with railroad or related transportation, together with (a) any and all parts, mechanisms, devices and replacements from time to time incorporated in or installed on or attached to any of the foregoing, (b) any and all additions and improvements from time to time incorporated in or installed on or attached to any of such transportation equipment pursuant to any law, rule or regulation and (c) any and all non-removable improvements.

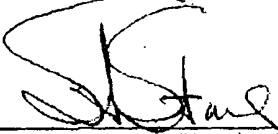
As contemplated by the Agreement, the Collateral Agent and the Loan Parties hereby make this Memorandum to confirm and perfect the Collateral Agent's security interest in the Collateral for the benefit of the Secured Parties, to the extent such security interest is perfectible by a filing with the Surface Transportation Board. The Collateral Agent and the Loan Parties further acknowledge and confirm that this Memorandum is not a summary of the Agreement nor a complete recitation of the terms and provisions thereof. The Collateral Agent and the Loan Parties agree that in the event of a conflict between this Memorandum and the provisions of the Agreement, the provisions of the Agreement shall control.

IN WITNESS WHEREOF, the parties hereto wish to show for the public record the security interest in the aforesaid property in favor of the Collateral Agent, and accordingly, have each caused this Memorandum to be duly executed by their respective officers duly authorized as of the date and year first above written. This Memorandum may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Memorandum as of the day and year first above written.

ORIENT EXPRESS ACQUISITION COMPANY,

by

  
Name: SHERRY A. STANLEY  
Title: SECRETARY

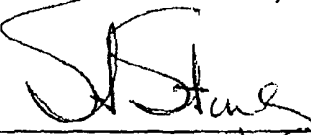
HELM FINANCIAL CORPORATION,

by

\_\_\_\_\_  
Name:  
Title:

LONG HAUL HOLDING CORP.,

by

  
Name: SHERRY A. STANLEY  
Title: SECRETARY

HELM LOCOMOTIVE LEASING  
CORPORATION,

by

\_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have duly executed this Memorandum as of the day and year first above written.

ORIENT EXPRESS ACQUISITION COMPANY,

by

\_\_\_\_\_  
Name:

Title:

HELM FINANCIAL CORPORATION,

by

Matthew M. O'Brien

Name: Matthew M. O'Brien

Title: V.P., General Counsel & Secretary

LONG HAUL HOLDING CORP.,

by

\_\_\_\_\_  
Name:

Title:

HELM LOCOMOTIVE LEASING  
CORPORATION,

by

Matthew M. O'Brien

Name: Matthew M. O'Brien

Title: V.P., General Counsel & Secretary

CREDIT SUISSE, CAYMAN ISLANDS  
BRANCH, as Collateral Agent,

by



Name:

**JAMES MORAN**

Title:

**MANAGING DIRECTOR**

by



Name:

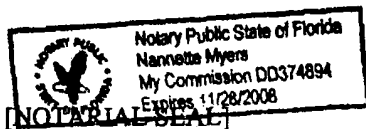
**DENISE L. ALVAREZ**

Title:

**ASSOCIATE**

STATE OF Florida )  
COUNTY OF Miami-Dade )

On this 8<sup>th</sup> day of July, 2005, before me personally appeared Sherry A. Stanley, to me personally known, who being by me duly sworn, say that she is Secretary of ORIENT EXPRESS ACQUISITION COMPANY, that said Memorandum was signed on such date on behalf of said corporation, and she acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.



  
NOTARY PUBLIC

produced I.D. FL DL# S 354-781-56-877-0

My commission expires:

STATE OF )  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, say that he is \_\_\_\_\_ of HELM FINANCIAL CORPORATION, that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC

[NOTARIAL SEAL]

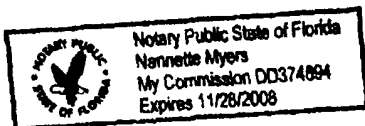
My commission expires:



STATE OF Florida )  
COUNTY OF Miami-Dade )

SS

On this 8<sup>th</sup> day of July, 2005, before me personally appeared Sherry A. Stanley, to me personally known, who being by me duly sworn, say that he is Secretary of LONG HAUL HOLDING CORP., that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.



[NOTARIAL SEAL]

My commission expires:

*Nannette Myers*  
NOTARY PUBLIC

produced ID # S354.781-55.877-0

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, say that he is \_\_\_\_\_ of HELM LOCOMOTIVE LEASING CORPORATION, that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires:

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, say that he is \_\_\_\_\_ of ORIENT EXPRESS ACQUISITION COMPANY, that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.

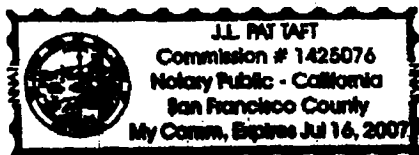
\_\_\_\_\_  
NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires:

STATE OF California )  
 )  
COUNTY OF San Francisco ) SS

On this 8<sup>th</sup> day of July, 2005, before me personally appeared Matthew M. Ogburn, to me personally known, who being by me duly sworn, say that he is VP, General Counsel & Sec. of HELM FINANCIAL CORPORATION, that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.



J.L. Pat Taft  
NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires:

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, say that he is \_\_\_\_\_ of LONG HAUL HOLDING CORP., that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.

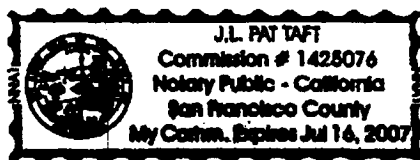
\_\_\_\_\_  
NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires:

STATE OF California )  
 )  
COUNTY OF San Francisco ) SS

On this 8<sup>th</sup> day of July, 2005, before me personally appeared Matthew H. Ogden, to me personally known, who being by me duly sworn, say that he is Vp, General Counsel & Sec. of HELM LOCOMOTIVE LEASING CORPORATION, that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.



[NOTARIAL SEAL]

My commission expires:

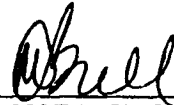
[Signature]  
NOTARY PUBLIC

STATE OF NEW YORK )  
 )  
COUNTY OF NEW YORK )

SS

On this 7<sup>th</sup> day of JULY, 2005, before me personally appeared J. MORAN & D. ALVAREZ, to me personally known, who being by me duly sworn, say that he is MDR & ASSOC., of CREDIT SUISSE, that said Memorandum was signed on such date on behalf of said association, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said association.

MARJORIE E. BULL  
NOTARY PUBLIC, State Of New York  
No. 01BU6055282  
Qualified in New York County  
Commission Expires February 20, 2007



NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires:

**CERTIFICATION**

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: \_\_\_\_\_

7/8/05



\_\_\_\_\_  
Robert W. Alvord

RECORDATION NO. 25701 FILED

JUL 08 '05

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SURFACE TRANSPORTATION BOARD

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
1050 SEVENTEENTH STREET, N.W.  
SUITE 301  
WASHINGTON, D.C.

20036

(202) 393-2266

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E-MAIL alvordlaw@aol.com

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

OF COUNSEL  
URBAN A. LESTER

July 8, 2005

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Collateral Agent/  
Secured Party: Credit Suisse,  
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New York, NY 10010

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July 8, 2005  
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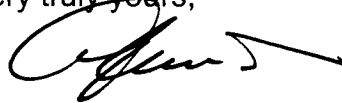
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A handwritten signature in black ink, appearing to read 'R. Alvord', with a long horizontal stroke extending to the right.

Robert W. Alvord

RWA/anm  
Enclosures

JUL 08 '05

3-20 PM

## SURFACE TRANSPORTATION BOARD

**MEMORANDUM OF GUARANTEE AND COLLATERAL AND INTERCREDITOR AGREEMENT**

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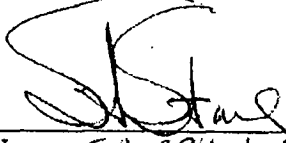
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IN WITNESS WHEREOF, the parties hereto have duly executed this Memorandum as of the day and year first above written.

ORIENT EXPRESS ACQUISITION COMPANY,

by

  
Name: SHERRY A. STANLEY  
Title: SECRETARY

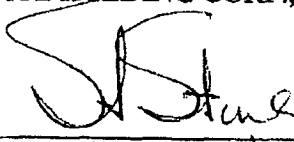
HELM FINANCIAL CORPORATION,

by

\_\_\_\_\_  
Name:  
Title:

LONG HAUL HOLDING CORP.,

by

  
Name: SHERRY A. STANLEY  
Title: SECRETARY

HELM LOCOMOTIVE LEASING  
CORPORATION,

by

\_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have duly executed this Memorandum as of the day and year first above written.

ORIENT EXPRESS ACQUISITION COMPANY,

by

\_\_\_\_\_  
Name:

Title:

HELM FINANCIAL CORPORATION,

by

Matthew M. Ogburn

Name: Matthew M. Ogburn

Title: V.P., General Counsel & Secretary

LONG HAUL HOLDING CORP.,

by

\_\_\_\_\_  
Name:

Title:

HELM LOCOMOTIVE LEASING  
CORPORATION,

by

Matthew M. Ogburn

Name: Matthew M. Ogburn

Title: V.P., General Counsel & Secretary

CREDIT SUISSE, CAYMAN ISLANDS  
BRANCH, as Collateral Agent,

by



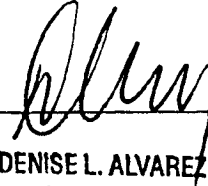
Name:

**JAMES MORAN**

Title:

**MANAGING DIRECTOR**

by



Name:

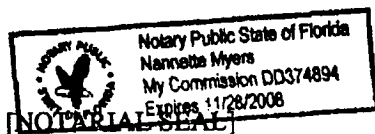
**DENISE L. ALVAREZ**

Title:

**ASSOCIATE**

STATE OF Florida )  
COUNTY OF Miami-Dade )

On this 8<sup>th</sup> day of July, 2005, before me personally appeared Sherry A. Stanley, to me personally known, who being by me duly sworn, say that she is Secretary of ORIENT EXPRESS ACQUISITION COMPANY, that said Memorandum was signed on such date on behalf of said corporation, and she acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.



  
NOTARY PUBLIC

Produced I.D. R DL# S 354-781-55-877-0

My commission expires:

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, say that he is \_\_\_\_\_ of HELM FINANCIAL CORPORATION, that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC

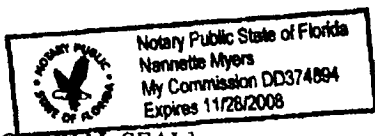
[NOTARIAL SEAL]

My commission expires:

STATE OF Florida )  
COUNTY OF Miami-Dade )

SS

On this 8<sup>th</sup> day of July, 2005, before me personally appeared Sherry A. Stanley, to me personally known, who being by me duly sworn, say that he is Secretary of LONG HAUL HOLDING CORP., that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.



[NOTARIAL SEAL]

My commission expires:

*Nannette Myers*  
NOTARY PUBLIC

produced ID FLD# S354-781-55-877-0

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, say that he is \_\_\_\_\_ of HELM LOCOMOTIVE LEASING CORPORATION, that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires:

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) SS

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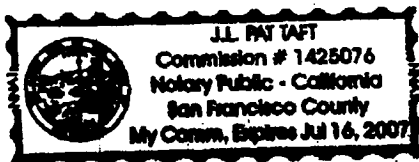
\_\_\_\_\_  
NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires:

STATE OF California )  
 )  
COUNTY OF San Francisco ) SS

On this 8<sup>th</sup> day of July, 2005, before me personally appeared Matthew M. Ogburn, to me personally known, who being by me duly sworn, say that he is VP, General Counsel & Sec. of HELM FINANCIAL CORPORATION, that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.



J. Pat Taft  
NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires:

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, say that he is \_\_\_\_\_ of LONG HAUL HOLDING CORP., that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.

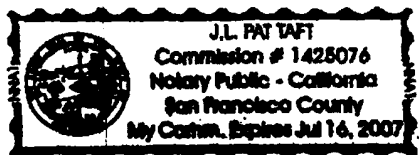
\_\_\_\_\_  
NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires:

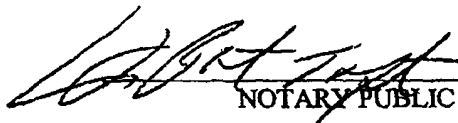
STATE OF California )  
 )  
COUNTY OF San Francisco ) SS

On this 8<sup>th</sup> day of July, 2005, before me personally appeared Matthew H. Ogburn, to me personally known, who being by me duly sworn, say that he is VP, General Counsel & Sec. of HELM LOCOMOTIVE LEASING CORPORATION, that said Memorandum was signed on such date on behalf of said corporation, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said corporation.



[NOTARIAL SEAL]

My commission expires:

  
NOTARY PUBLIC



STATE OF NEW YORK )

) SS

COUNTY OF NEW YORK)

On this 7<sup>th</sup> day of JULY, 2005, before me personally appeared J. MORGAN D. ALVAREZ, to me personally known, who being by me duly sworn, say that he is MDR & ASSOC., of CREDIT SUISSE, that said Memorandum was signed on such date on behalf of said association, and he acknowledged that the execution of the foregoing Memorandum was the free act and deed of said association.

MARJORIE E. BULL  
NOTARY PUBLIC, State Of New York  
No. 01BU6055282  
Qualified In New York County  
Commission Expires February 20, 20 07



NOTARY PUBLIC

[NOTARIAL SEAL]

My commission expires:

**CERTIFICATION**

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: \_\_\_\_\_

7/8/05



\_\_\_\_\_  
Robert W. Alvord